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AUTHOR Rosenblum, Warren; And Others
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ABSTRACT

The purpose of this lesson packet is to raise issues about student rights of free expression in public schools. Included are preparatory reading material and two classroom simulation activities. The lessons are based on the U.S. Supreme Court case of Hazelwood v. Kuhlmeier, in which a Missouri high school principal and school district were sued by students for censoring controversial feature articles in a school newspaper. Part 1 presents the legal background of the Hazelwood case, discussing the U.S. Constitution and various court decisions regarding free expression, due process, and the rights of schools and the local, state and federal governments. Part 2 gives the background of the Hazelwood case, and discusses the development of relevant legal issues such as "public forum" and "compelling interest." Part 3 presents a simulation exercise, a moot court activity in which teams of students represent attorneys for petitioners and respondents, and Supreme Court justices. Part 4 summarizes the arguments presented by both the majority and the dissenting justices in the Hazelwood case. Part 5 presents a simulation activity in which students engage in a policy debate on the rights of student journalists. Included in the packet are profiles of former Hazelwood East High School student Leslie Smart and principal Robert E. Reynolds, and a teacher's guide to the lessons. (AS)

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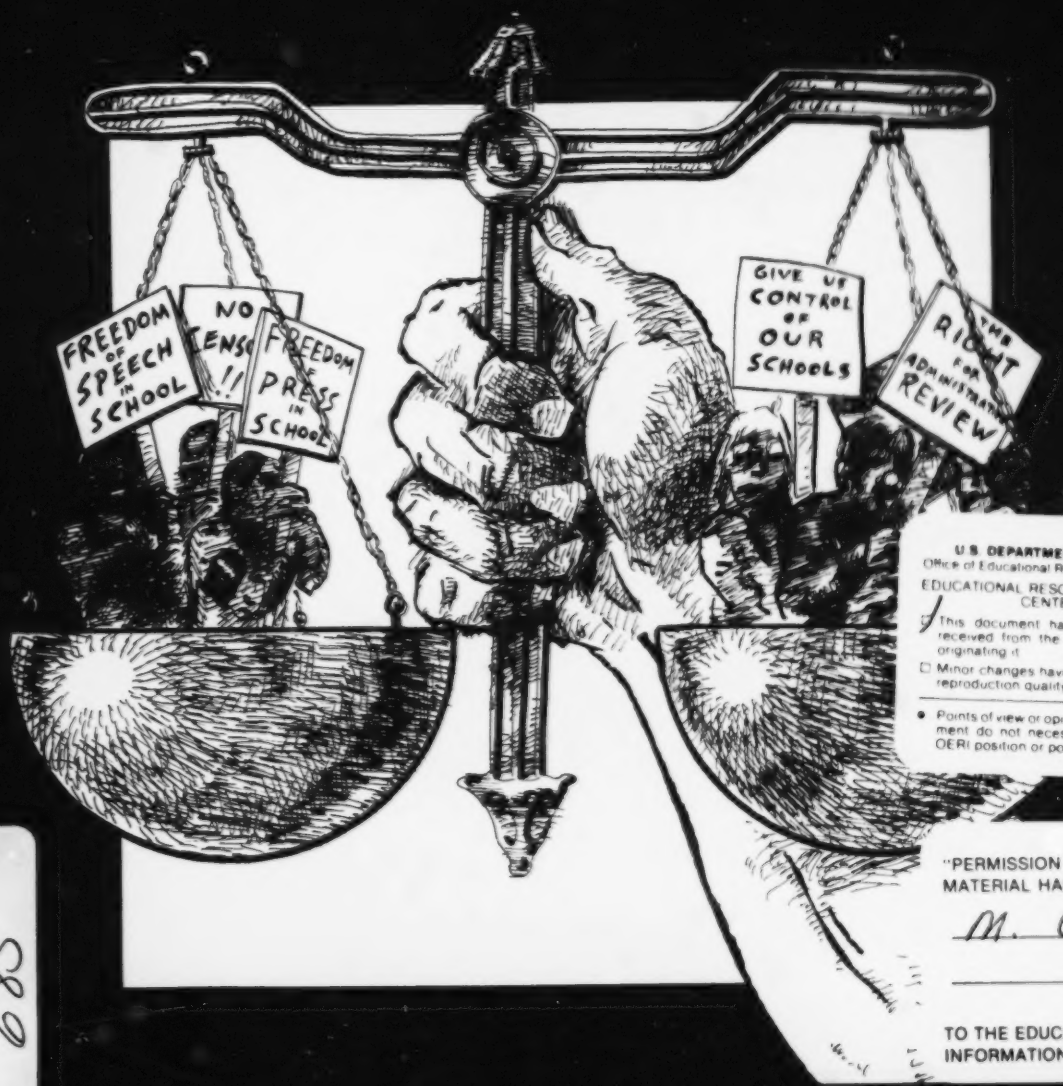
FROM THE SCHOOL NEWSROOM TO THE COURTROOM



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LESSONS ON THE HAZELWOOD CASE AND FREE EXPRESSION POLICY MAKING IN THE PUBLIC SCHOOLS

CRF

CONSTITUTIONAL RIGHTS FOUNDATION

This instructional packet grew out of a conference on student free expression sponsored by the Chicago Office of the Constitutional Rights Foundation and the Field Foundation in the fall of 1988. Our first thanks must go, then, to the Field Foundation and Iris Krieg, in particular, who first approached us with the idea of doing a conference for students regarding the *Hazelwood v. Kuhlmeier* case.

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Authors: Warren Rosenblum
Diana Hess
Carolyn Pereira

Editor: Marshall Croddy

Art: Chris Lanier

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Constitutional Rights Foundation

601 South Kingsley
Los Angeles, California 90005
(213) 487-5590
Executive Director, CRF:
Todd Clark

407 South Dearborn, Suite 1700
Chicago, Illinois 60605
(312) 663-9057
Executive Director, Chicago Office:
Carolyn Pereira

INTRODUCTION

In May of 1983, three Missouri high school seniors took their school to court. Cathy Kuhlmeier, Leslie Smart and Lee-Ann Tippett were staff members of the student newspaper, *Spectrum*, at Hazelwood East High School when the school principal stopped publication of six feature articles. They had not been consulted about the principal's decision. Later, the principal told them that two of the articles were inappropriate for younger students, too personal and simply unsuitable for *Spectrum*. The students filed a federal law suit against the principal and the Hazelwood School District in the U.S. District Court for Eastern Missouri, claiming that their rights to free expression under the First Amendment had been violated.

The students' lawyers argued that the school newspaper was a "public forum." Therefore, students had the right to state opinions on anything so long as their speech did not disrupt classwork or interfere with the rights of others. The school district's lawyers disagreed. First, they argued, *Spectrum* was not a public forum: it was part of the classroom curriculum. As such, the paper was under the teacher's and ultimately the principal's control. The lawyers also claimed that the principal's actions were "reasonable" because the articles did not meet proper journalistic standards and could be damaging to young people.

The students lost their case in a U.S. District Court but appealed to a higher court. The U.S. Court of Appeals ruled 2 to 1 in the students' favor, and the school district appealed the case to the highest court in the land. The U.S. Supreme Court agreed to consider the case in its Fall 1987 term.

What had begun in a small high school newsroom, with a few ideas for feature articles, had now become a matter of national importance. The case of *Hazelwood School District, et al v. Cathy Kuhlmeier, et al* would significantly affect First Amendment law and the rights and obligations of students and administrators across the United States.

In the following lessons, you and your classmates will consider the facts of the *Hazelwood* case and reach a decision in a process modelled on that used by the U.S. Supreme Court. After you have made your own decision, you will examine the decision of the real Supreme Court. Later, you will explore what the Court's decision means for local communities like your own by debating two hypothetical school-board policies which attempt, in different ways, to take account of the Supreme Court's decision.

To participate in these activities, you will need to review the sections of the U.S. Constitution which outline the rights of free expression. Just as important, you will have to understand the Supreme Court's past decisions, or **precedents**, on free speech cases and, in particular, on cases involving the rights of students in the public schools. These precedents will help you understand the significance of the Constitution in free expression disputes. In its decisions, the Court established standards for judging when the actions of a school administrator are constitutionally "reasonable" and when it might be appropriate for the federal government to intervene in the delicate relationship between local school authorities and their students. Before we go on to the facts of this case, let's look at the legal context of the issues involved.

I. LEGAL PRECEDENTS

The local school board is the official body designated by the people to operate the schools. On what grounds did the Hazelwood students challenge this democratic authority? In the *Hazelwood* case, students claimed that the school authorities violated their First Amendment rights by censoring the newspaper. Yet, the First Amendment states only that "*Congress* shall make no law...abridging the freedom of speech, or of the press."* There is no mention of state or local legislatures, nor is there mention of officials of any kind. One might also ask why this case is a matter of freedom of speech. After all, the newspaper belongs to the school. If the school has created some benefit (whether a newspaper, a library or a classroom) shouldn't the school authorities be allowed to withdraw that benefit?

Clearly, the constitutional impact of this schoolhouse dispute is not revealed simply by reading the Constitution and the Bill of Rights. A time traveler popping in from 19th century America would likely be baffled that the federal judge did not simply throw out the case. To rescue him from exasperation, we would need to explain some of the judicial precedents which over the years have changed the shape of First Amendment law.

The Supreme Court Reinterprets the "Due Process" Clause

One thing our time traveler would know nothing about is the Fourteenth Amendment. Passed soon after the Civil War, it contains a provision that declares that no *state* shall "deprive any person of life, liberty, or property, without due process of law."

Beginning in 1925, U.S. Supreme Court Justices have held that this provision, called the "due process clause," protects some of the fundamental freedoms of the Bill of Rights, including free speech, against action by any state or any agent of a state government. The key to this revolution in interpreting the Constitution lies in the word "liberty." Justice Sanford stated in *Gitlow v. New York* that "freedom of speech and of the press...are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment." Once First Amendment liberties were incorporated into the Fourteenth Amendment, federal courts could review the way local authorities regulated spoken and written expression in their communities, if a case were brought before them.

Opinions vary about the wisdom of this decision. Many people have argued that the Supreme Court's interpretation of the Fourteenth Amendment's "due process clause" made real the true purpose of the Constitution by bringing its protections to everyone. Others argue that the Court has distorted the Constitution, because the authors of the First and Fourteenth Amendments never intended that these provisions be used by the federal government to intervene so extensively in the affairs of states and local communities.

As you will see again and again in constitutional law, the dispute between those favoring more federal power and those preferring that decisions be left to local authorities has not been resolved. This issue plays an especially important role in the ongoing dispute over the First Amendment rights of students in the public schools.

* to **abridge** = to reduce in scope; to diminish

The U.S. Supreme Court "...at the Schoolhouse Gates"

There has never been any doubt that public school employees are agents of state governments. Thus, once the Supreme Court began to hold states responsible to the standards of the Bill of Rights, federal courts could rule on questions concerning "liberty" within the public schools. Yet the courts have always treated school issues with particular care. Judges have held that teachers, principals and school board members have special responsibilities for which they must have certain powers not normally granted to government officials in other settings.

The special responsibilities of school officials have been long embodied in the doctrine of *in loco parentis*. This Latin phrase literally means "in place of parents." As legal doctrine, *in loco parentis* extends to school officials and teachers authority over children similar to that which is exercised by parents.

Before 1943, this traditional regard for the special needs of educators made the Court wary of intervening in schoolhouse disputes. "The courtroom," wrote Justice Frankfurter in *Minersville School District v. Gobitis*, "is not the arena for debating issues of educational policy." In that 1940 decision, the Court ruled that students had *no* constitutional right to refuse to salute the American flag in class. According to Justice Frankfurter, whether students should be required to salute the flag was an educational, and not a constitutional, question. If the Court were to impose a policy upon the nation's schools, its decision "would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it."

West Virginia State Board of Education v. Barnette

Only three years later, however, the Court made a dramatic reversal on students' First Amendment rights. The 1943 case of *West Virginia State Board of Education v. Barnette* again concerned public school students who refused to salute the American flag. The students were Jehovah's Witnesses whose religious convictions forbid them from honoring symbols of state power. When the school expelled them, they sued in federal court, claiming that their First Amendment rights to freedom of speech and religion were violated by the school's attempt to force patriotic expression upon them.

This time the Court ruled for the students. "The Fourteenth Amendment as now applied to the States," the Court ruled, "protects the citizen against the State itself and all of its creatures–Boards of Education not excepted." School boards do indeed have "important, delicate, and highly discretionary functions," Justice Robert Jackson wrote, "but none that they may not perform within the limits of the Bill of Rights." In this decision, the Court established beyond a doubt that students *do* have constitutional rights. Because schools "are educating the young for citizenship," Jackson argued, "they must be especially careful about upholding fundamental freedoms." If the views of school officials are imposed upon students, schools will ultimately "strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."*

Did the *West Virginia* decision mean that students would have a constitutional right to express themselves or merely a right **not to be forced** to express things

* a **platitude** is a commonly repeated statement which is empty of significance

with which they disagreed? The answer was not clear. For the most part, lower courts and school officials followed an extremely narrow interpretation of the *West Virginia* decision. That is, they maintained that the *West Virginia* case only applied to situations in which students may be forced to violate their religious beliefs.

Tinker v. Des Moines

Not until the case of *Tinker v. Des Moines* did the Supreme Court clearly state that students have a constitutional right **to express themselves**. This case came before the Supreme Court in 1969. At the time, American youth were being drafted to fight in the war in Vietnam. A group of families in Des Moines, Iowa decided to protest the war by wearing black armbands. School officials heard about their plans and quickly passed a regulation which banned the wearing of black armbands by students in the public schools. When three students wore their armbands anyway, they were suspended. The students sued in federal court.

The Supreme Court declared the school's regulation invalid. Justice Abe Fortas wrote in the majority opinion that a public school may only censor student speech which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others..." This declaration has come to be known as the "**Tinker standard**." To meet this standard, a school must show that its censorship of student expression "was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." The Court also declared, in an oft-quoted remark, that "students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The *Tinker* case radically altered the scope of the Constitution in the public schools by extending First Amendment protections to students against violation by school employees.

Recent Cases

During the next seventeen years, however, both the temper of the times and the membership of the Supreme Court changed. These changes have had a powerful impact on the Court's view of students' constitutional rights in public schools. Two Court rulings in particular indicated that public school students have fewer rights than people in other less regulated settings. The decisions in *New Jersey v. T.L.O.* and *Bethel School District v. Fraser* granted school authorities more latitude in regulating student conduct and expression. These cases are, thus, an essential part of the legal background to *Hazelwood v. Kuhlmeier.*

New Jersey v. T.L.O

In 1985, the Supreme Court held that while high school students have legitimate expectations of privacy, schools also have a responsibility to maintain an environment where learning can take place. In the case of *New Jersey v. T.L.O.*, the Court held that school officials could justifiably search a student's purse even without "probable cause." Unlike the police and other government agents in society at-large, school officials were given the right to conduct search and seizures based only on a "reasonable" suspicion that wrong-doing would be discovered. Justice Byron White, speaking for the majority, reasoned that the special characteristics of school settings and teacher-student relationships "make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting."

New Jersey v. T.L.O. was not a free expression case, but it revealed a change in the Court's approach to student rights from the time of the *Tinker* decision. The Court explicitly granted school officials powers which it denied to government agents in most situations. In so doing, the Court returned to its earlier emphasis upon the school's special responsibility for its students *in loco parentis*.

Bethel School District v. Fraser

One year later, in *Bethel School District v. Fraser*, the Court further revised the *Tinker* approach to student rights, this time in a free expression controversy. Matthew Fraser was suspended by his principal for giving a sexually explicit election speech at a school-sponsored assembly. The Court agreed with Fraser that his speech would not have been punishable had it been given outside of school or possibly even in another school situation. However, the Court held that school officials have the authority to determine what kind of speech disrupts the educational process or "invades the rights of others" in a school-sponsored assembly attended by younger and older students, expecting to hear the average student council election speeches. School officials must uphold the "educational mission," wrote Chief Justice Burger in the majority opinion. They must teach "fundamental values." For these reasons, the First Amendment rights of students in public schools are not "automatically" as extensive as "the rights of adults in other settings."

What did these cases mean for students writing in a school-sponsored newspaper? The answer was uncertain, and that is exactly why the case of *Hazelwood v. Kuhlmeier* made it all the way to the U.S. Supreme Court. Lower courts around the country were applying these school law precedents in different ways. The Supreme Court agreed to hear *Hazelwood v. Kuhlmeier* in hopes of clarifying the limits and scope of students' First Amendment rights of free expression.

For Further Consideration:

1. What are the advantages and disadvantages of having federal judges review the constitutional rights of students in the public schools?

2. Decide whether the public school officials in the following examples have violated the First Amendment according to the Tinker standard:

A. Sally stands up in the middle of a chemistry lesson and starts lecturing on the need for a socialist revolution in the United States. None of the other students can concentrate on their work because of her. The teacher asks her to stop, but Sally refuses. She is suspended for three days.

B. Bill wears a button on his shirt to protest a local factory's contamination of the river. The principal informs Bill that he is violating a school rule against "political agitation on campus." Bill is suspended from school until he stops wearing the button.

II. BACKGROUND INFORMATION: HAZELWOOD v. KUHLMEIER

Introduction

Before exploring the issues raised in the *Hazelwood* case, it is important to understand the development of a legal idea which was a key part of the Supreme Court's decision. We can begin by asking the question, what is a "public forum?"

Public Forum

If people began insulting you in your own home, you might perfectly well throw them out, and no one would suggest that you had violated your guest's First Amendment right of free speech. The house is your property, after all. It was your party: you make the rules. Why can't government officials follow the same logic in regulating speech on government property?

In fact, until fifty years ago, the courts said they could! Oliver Wendell Holmes, one of the United State's most famous judges, had written that for a state "to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in the house." In the 1939 case of *Hague v. CIO*, however, the Supreme Court rejected that reasoning. The Court declared that the use of public streets and parks by the people for "purposes of assembly, communicating thoughts...and discussing public questions" is part of "the rights and *liberties* of citizens." Streets,

The Supreme Court Building in Washington, D.C. *UPI/Bettmann Newsphotos*

parks, or any public facilities which have traditionally been used for the exercise of democracy constitute "**public forums**."

When regulating speech within a public forum, the Court wrote, the state must follow **due process of law**. Any restrictions on speech must be "reasonable" and may not be efforts to suppress views of which state officials do not approve. Furthermore, as later courts have added, the state may not **prevent** speech from taking place, even if the speech is likely to be punishable. Instead, the state must wait until the speech has been made and only punish the offender if the speech in some way violates the law. The only exception to this rule is when the state can prove a **compelling interest** in restraining speech, such as to prevent a riot or some other dangerous situation which is likely to occur.

Designated Public Forum

Later, in the 1983 case of *Perry Education Association v. Perry Local Educators' Association*, the Court expanded the idea of a public forum to include "**designated public forums**." A designated public forum is a place or facility which the state has "by policy or by practice" opened up for "indiscriminate use" by the general public or some segment of the public (like student organizations.) For example, if a government office gives all employees the opportunity to make speeches over the public address system (P.A.) about whatever they please, then the P.A. has *been designated* a public forum. From then on, those office authorities are constitutionally limited in how they regulate the use of the facility. They may *not* stop an employee from giving the talk simply because they dislike the proposed content. In order to censor speech over the P.A., the office authorities would have to show some kind of *compelling interest* for preventing the speech.

For Further Consideration:

1. What are some traditional public forums in your city? Do you know of any "designated public forums"?

2. Consider the following hypothetical situation:
   Rappen City High School has been allowing students to make public speeches after school in the cafeteria on whatever topics they choose. Every Monday in March, students made speeches on a wide variety of topics. One student denounced the Board of Education for cutting the athletic budget. Another student denounced the Drama Department's casting policy. Amy announced that she would give a speech on the first Monday in April criticizing the principal's plan for cutting honors courses. On the day of her speech, the principal came and locked up the cafeteria, saying that the school facilities were not to be used for attacks on school personnel.

   Do you think the principal has violated the Constitution? Why or why not?

Background

Spectrum was written and edited by the Journalism II class at Hazelwood East High School. Policies controlling its function, and the rights and responsibilities of the student journalists, were defined in three ways. The Hazelwood School Board Policy declared that "school sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism. [Such publications are] developed within the adopted curriculum and its educational implications in regular classroom activities."

The High School's curriculum guide described the Journalism II course as "a laboratory situation in which the students publish the school newspaper, applying skills they have learned in Journalism I."

Finally, at the beginning of the school year, *Spectrum* itself published a statement which read, "*Spectrum*...accepts all rights implied by the First Amendment.... Only speech that materially and substantially interferes with the requirements of appropriate discipline can be found unacceptable and therefore prohibited."*

Student Cathy Kuhlmeier became copy editor of the paper in 1982. She says that her goal then was to try "to make a change with the school paper and not just write about the school proms, football games and piddly stuff." She and two other staff members decided to produce a feature issue towards the end of the school year investigating various types of real teenage problems.

* The language is, of course, adapted from the *Tinker* decision.

The Articles

Reporters submitted their feature stories at the beginning of May. The most controversial articles dealt with teenage pregnancy and the impact of divorce on the lives of students.

"Sixteen year old Sue had it all," one article began, "good looks, good grades, a loving family and a cute boyfriend. She also had a seven pound baby boy." The writer then gave statistics on the rate of teenage pregnancy and on teenage sexual activity. The article quoted counselors on teenagers' ignorance or disinterest in using birth control. "It's as if being prepared makes one immoral," says one woman, "these girls believe that if you plan for sex, you're fast or bad. So it's the good girls who get pregnant." The article also discussed the rise in teenage abortions, the neglect of sex education by parents and the "alarming" consequences of teenage pregnancy for the girl and the child. The story ended: "millions of teens get pregnant each year and millions will in years to come. Could one of them be you?"

A side story interviewed three Hazelwood East High School students who became pregnant, using false names to protect their identity. All three girls declared that they had never felt pressured into having sex. The first girl, five months pregnant, stated she is "very excited about having a baby." She has married her boyfriend, and her parents are no longer upset. The second girl has had her baby. She discussed how she was initially upset and says, "if I could go back to last year, I would not get pregnant, but I have no regrets. We love our baby more than anything in the world (my boyfriend and I) because we created him!" The third girl also described her original reaction as "shocked," but has also learned to cope

with having a child. She and her boyfriend will marry when they are financially ready.

"Divorce's Impact on Kids May have Lifelong Effect" was the headline of a short piece for which 25 students were interviewed. One freshman girl quoted by name states, "my dad wasn't spending enough time" with the family but was often "out late playing cards with the guys." An anonymous junior related that he and his mom couldn't stand his father's drunkenness. The writer apparently did not interview any parents and quoted only one adult, a teacher, who speculated on the overall effect of divorce on teenagers.

The other articles featured teenage runaways, teenage marriages, and the "squeal law" requiring notification of parents when minors receive free birth control from federally-funded clinics.

The Dispute

When the newspaper was ready for the printer, the journalism advisor reviewed it and, as required, submitted the page proofs to the school principal, Robert E. Reynolds, for final approval. Reynolds directed the journalism advisor to delete the two pages containing the five feature stories. He objected only to the interview with the pregnant girls and the story on the impact of divorce but did not believe there was time to reformat the paper or to revise the two articles in question. As a result, he ordered that the whole feature section be cut. He did not give the journalism advisor any reasons for the deletions.

Later Reynolds would testify that he ordered the deletions to protect people's privacy, guard the school's educational environment, and uphold journalistic standards. He believed that the interview with the pregnant girls did not sufficiently disguise their identities in spite of the false names used in the story. Furthermore, he believed the girls' discussions of their sexual activity was unsuitable for a high school audience. He objected to the divorce article because quoted students were named, possibly invading their parents' privacy.* From a journalistic standpoint, he claimed, the article lacked "fairness and balance," because the father had not been given the chance to reply to the charges against him.

Reynolds did not inform the *Spectrum* staff members of his decision. Only after the finished paper appeared did the students realize that their stories had been deleted. They promptly asked for a meeting with the principal, who stated that the stories had been removed because they were "inappropriate, personal, sensitive and unsuitable for the newspaper." After the meeting, the staff members photocopied the censored articles and passed them out to fellow students. The entire matter was on its way to becoming a much larger dispute.

For Further Consideration:

1. Based on the School Board Policy and the curriculum guide, had *Spectrum* been designated a public forum? Why?
2. According to the principal, what journalistic standards were violated by the articles? In your view did the articles meet journalistic standards? Why or why not?

* Actually, the students had already removed all names from that article on the advice of the advisor. The advisor, however, did not mention this in his conversations with the principal, and the principal did not ask whether such changes were still possible.

III. MOOT COURT ACTIVITY: THE SUPREME COURT REVIEWS HAZELWOOD V. KUHLMEIER

A Simulation Exercise

After reviewing the background and facts of the *Hazelwood* case, you will serve as United States Supreme Court Justices, **Petitioners**, and **Respondents**. (The Petitioner is the party making the appeal to the Supreme Court. The Respondent is the party opposing the petition.) In this activity, the Supreme Court's procedures have been simplified to the following steps:

1. Attorney teams for the Petitioner (Hazelwood) and for the Respondent (Kuhlmeier) prepare arguments to support their positions and present these to a Court of nine Justices. Each side is allowed four minutes for its presentation.
2. As the Court hears the arguments, any Justice can interrupt to ask questions. After all have spoken, the Chief Justice moderates a five-minute conference in which Justices try to change each others' minds. At the end of the conference, the Justices take a final vote.

Instructions for Attorneys Representing the Petitioners and Respondents

Attorneys for the Hazelwood School District are responsible for making arguments that the principal's actions were

Principal Robert Reynolds of Hazelwood East High School in Hazelwood, Missouri. *UPI/Bettmann Newsphotos*

not a violation of the First Amendment rights of the students based on the Constitution and previous decisions of the U.S. Supreme Court.

Consider each of the following claims:

- The school had not designated *Spectrum* a public forum. The newspaper was simply part of the curriculum.
- It is up to the teacher, principal, and, ultimately, the local school board to decide whether the students' articles will run in the newspaper. They should be given complete freedom to censor student articles, so long as their actions are related to reasonable academic concerns.
- The Hazelwood principal acted reasonably.

Attorneys for the students are responsible for making arguments that the students' First Amendment rights were violated by the principal's actions based on the Constitution and previous Supreme Court decisions.

- The school had designated *Spectrum* a public forum.
- The students had a constitutional right to express themselves in *Spectrum*, unless their articles disrupted the educational environment or invaded the rights of others.
- The principal's censorship was unreasonable.

Each team of attorneys should write down the following information:

- A clear, brief statement of your position;
- At least two facts from the case which support your position;
- An explanation of how each fact supports your position;
- An explanation of how a previous Supreme Court decision on the Constitution in the public schools supports your position;
- An explanation of how your decision relates to previous Supreme Court decisions on public forum law.

Make an outline of this information so that all of it can be included in your four-minute presentation. Decide which team member(s) will present the information. Finally, assign at least one team member to answer the Justices' questions. He or she should prepare by carefully reviewing the case description.

Instructions For Justices

When preparing to hear arguments, Supreme Court Justices review documents with their clerks about a case and identify the questions they want to ask the attorneys. What don't you understand about *Hazelwood v. Kuhlmeier*? What facts do you want clarified? Which of their clients' actions would you like the attorneys to justify or explain?

Justices also prepare by reviewing previous court decisions. Which of the cases you read about in Section I, "Legal Precedents," should be applied to this case? In order to promote consistency and stability in the legal system, the Court tries to follow its own established precedents. However, the Court does occasionally abandon precedent and create new rules.

For Further Consideration:

1. How well did the school district's attorneys present their case? Did they leave out any important information? Were their arguments sound and reasonable?
2. How well did the Respondents' attorneys present their case? Was any important information left out? Were the students' arguments valid?
3. Did the Justices ask the right questions during the presentations? During their conference, what arguments did they consider? Did they ignore any important arguments?

continued

4. Does the Justices' decision support or reject the Tinker standard? Do you agree with their decision?

5. U.S. Supreme Court decisions are made by a process similar to the one you just tried, except:
   - Attorneys for the Petitioner and Respondent must give the Court detailed written arguments, called "briefs," before the case is heard. Other interested parties can also state their views about a case by submitting amicus, or friend-of-the-Court, briefs for consideration by the Justices. For the *Hazelwood* case, amicus briefs were submitted by numerous groups, including the American Civil Liberties Union (in support of the students) and the National School Boards Association (in support of the Hazelwood School District).
   - During oral arguments, each side is allowed thirty minutes including time taken up by questions posed by the Justices. This time limit is strictly enforced.
   - When the Court reaches a decision, the Chief Justice, if he or she is in the majority, assigns one of the Justices to write an explanation of that decision called **the majority opinion.** Justices who support the decision, but differ with the majority's reasoning, may write a **concurring opinion.** At least one of the Justices who disagree with the decision will write a **dissenting opinion.**

   Do you think this process is fair? Why or why not?

6. Read pages 14–15 to learn how the Supreme Court ruled in *Hazelwood v. Kuhlmeier.* Compare both the judgment and the reasoning behind it with your own.

7. Write a short essay supporting or disagreeing with the following statement:

   The Supreme Court made a wise decision in the Hazelwood v. Kuhlmeier case.

   In organizing your papers:
   - Indicate whether you support or oppose the decision of the Court
   - Quickly summarize the Hazelwood case
   - Cite at least one previous Supreme Court decision that supports your interpretation of the Constitution
   - Explain why *Spectrum* was or was not a "public forum"
   - Present one reason why your position is fair to the school district or to the students
   - Present one reason why a Court decision agreeing with your view will benefit American public school education

   Do not sign your name. Your teacher will give you an ID number to use instead. All papers will be read and critiqued by three students using the student critique sheet.

Student Critique Sheet

Paper #_____

1. Does the paper SUPPORT/REFUTE the decision of the Court? (Circle one)

	YES	NO
2. Is the *Hazelwood* case summarized? Comments:	YES	NO
3. Is a previous Court decision cited?	YES	NO
4. Does the paper explain why or why not *Spectrum* is a public forum?	YES	NO
5. Is an argument for fairness given?	YES	NO
6. Is an argument illustrating the benefit to education given?	YES	NO

7. On the paper mark any spelling, punctuation, or grammatical errors.

8. What is the best part of the paper?
(Use back of sheet for this and the following question.)

9. What needs improvement?

IV. THE SUPREME COURT DECISION IN HAZELWOOD V. KUHLMEIER

The Supreme Court announced its decision in January 1988, four and a half years after the Hazelwood principal censored the students' controversial feature stories. Cathy Kuhlmeier was now a senior in college. The *Spectrum* had a new journalism advisor.

The Majority Opinion

The decision was 5 to 3 in favor of the principal and the school board, with Justices White, O'Connor, Rehnquist, Scalia, and Stevens in the majority.* Justice Byron White wrote the majority opinion. His arguments can be summarized as follows:

1. Spectrum is not a public forum.

A. Forums for public expression are places like streets and parks that have traditionally been used by citizens for purposes of assembly and discussing public questions. School facilities only become public forums if the school authorities have opened those facilities for *indiscriminate use by the public.*

B. The Hazelwood authorities never opened up the student newspaper for such indiscriminate use.

2. Because Spectrum is sponsored by the school, the school authorities may exercise editorial control over its style and content so long as their actions are "reasonably related to legitimate" educational concerns.

A. The *Tinker* decision states only that the First Amendment requires a school *to tolerate* particular speech.

B. The First Amendment does *not* require a school affirmatively *to promote* particular student speech.

3. It was reasonable, from an educational standpoint, for the principal to have censored the articles.

A. • He could reasonably have feared for the privacy of the pregnant girls.
- It was reasonable to "have concluded that such frank talk was inappropriate in a school sponsored publication distributed to 14-year-old freshmen and presumably taken home to be read by students' even younger brothers and sisters."
- The school must be able to disassociate itself from views it does not support.

B. The principal believed that there was no time to make the necessary changes in the articles and still print the paper before school was out.

C. He was teaching the students a lesson in good journalism.

* Only eight Justices took part in the *Hazelwood* decision, because Justice Powell had recently retired, and the new Justice (Kennedy) had not yet started work.

The Dissent

Justices Brennan, Marshall, and Blackmun dissented in the decision. Justice Brennan wrote the dissenting opinion.

1. The First Amendment protects student free expression whether or not the forum is school sponsored.

A. Neither the *Tinker* decision nor any other precedent ever made a distinction between personal and "school sponsored" student expression such as the Majority declares (in #2 on previous page).

B. Through the written school board policy and the school's implicit acceptance of the newspaper's own statement of policy, the Hazelwood authorities had promised the students that *Spectrum* would be an open forum for the expression of student viewpoints.

2. The truly relevant standard here is the Tinker standard: Did the students' speech "materially disrupt classwork or involve substantial disorder or invasion of the rights of others?"

A. To allow state educators to remove news articles simply because they are *potentially sensitive*, is to create an unacceptably "vaporous" standard* for censorship. Such a standard would allow educators to act as "thought police," stifling discussion of any topics or viewpoints which are not "state-approved."

B. The school's need to disassociate itself from student views of which it does not approve can be addressed by published disclaimers rather than censorship.

3. The principal's censorship was not reasonable from an educational standpoint.

A. He did not consult the students before censoring the work and later explained his reasons "only in the broadest of generalities."

B. "He did not so much as inquire into obvious alternatives [to censorship] such as precise deletions or additions, rearranging the layout, or delaying publication."

C. Schools are entrusted with the task of teaching "the cherished democratic liberties that our Constitution guarantees." The principal's "brutal" censorship, and the Court's approval of it, teaches the young men and women of Hazelwood East a bad civics lesson.

Leslie Smart, former Hazelwood East High School student and staff member of school newspaper. *AP/Wide World Photos*

* A **vaporous standard** is one which, like vapor, lacks solidity. Such a standard is not definite enough to provide clear distinctions that would guide people in obeying the law or judges in applying it.

What does the Hazelwood decision mean for the student press?

The Hazelwood decision sparked strong reactions across the United States. Some writers sympathetic to the students' side accused the Court of giving school authorities the right to "censor just about any student speech, written or oral, that is not officially approved."* Others congratulated the Supreme Court for reclaiming the schoolhouse on behalf of principals or rescuing schools from their "loudest-mouth, but maybe not their brightest students."** Strong words like these tend to obscure two important aspects of the Court's decision.

First, the *Hazelwood* decision only applies to *school-sponsored* student publications. Many questions remain about what makes a publication school-sponsored and when it may be considered independent. It is clear, however, that the Court did not intend the *Hazelwood* decision to allow administrators to suppress any and all written student expression distributed on school grounds. Student publications which are *independently financed and produced* are still protected by the Tinker standard.

Secondly, the Supreme Court's decision has, in some sense, thrown the entire question of who controls the school newspaper back to state and local authorities. The Court has *not* declared that school principals have a constitutional right to censor student speech. Congress or a state legislature can still pass laws prohibiting administrators from interfering with school-sponsored presses and guaranteeing student free speech. The Court has only ruled that student speech in school sponsored forums has extremely limited constitutional protections. As Harvard Law Professor Alan Dershowitz has written:

> The Supreme Court is empowered merely to define *the minimum standards* required under the federal Constitution. Those standards are guaranteed for all Americans. But legislatures–state or federal–are empowered to give citizens *greater rights*, so long as those greater rights do not conflict with rights given to others under the federal Constitution.*

After having fought their case all the way to the highest court in the land, the students of Hazelwood East High School were, thus, back at the starting point. If any new staff members of *Spectrum* cared to demand rights of free expression for *Spectrum's* writers, they would have to argue their case before the Hazelwood School Board or the Missouri State Legislature. These governmental bodies would consider the question of whether it is good from an educational standpoint to allow school principals to control the content of school-sponsored publications. That is a slightly different question than we have considered so far, and there are sure to be wide differences of opinion among the interested parties and the experts in journalism and education. However, the question of whether the principal's control of the paper is *constitutional* has been substantially resolved by the Supreme Court's *Hazelwood* decision. In the lesson that follows, our continuing examination of student rights and school responsibilities will focus on decisions that local school boards need to make as a result of the *Hazelwood* decision.

* Nat Hentoff, "A Ruling for Censorship...," *Washington Post*, January 23, 1988.

** James Kilpatrick, quoting Justice Black's dissent in *Tinker*, "Or for Responsible Journalism," *Washington Post*, Ibid.

* Alan Dershowitz, "High Court isn't Stop of Last Resort for Civil Rights," *Chicago Sun-Times*, April 5, 1988.

V. SCHOOL BOARD SIMULATION: A POLICY DEBATE ON THE RIGHTS OF THE SCHOOL-SPONSORED STUDENT PRESS

In the following activity, you will explore the role of one of the most common governmental authorities in the United States, the local school board. Members of the class will serve as board members in the imaginary town of Hapville to decide whether to give greater rights to student journalists than the Supreme Court granted in its *Hazelwood* decision. In order to consider the issue in the fairest possible manner, board members will hear testimony from school administrators, teachers, students, parents, local journalists, and educational specialists. All roles will be played by members of the class. Your teacher will assign the roles, which are listed below, along with questions you need to consider in preparing your presentations.

The Background

Arnie B. Peachy High School is a school with 3,000 students in Hapville, a

PEACHFUZZ
How To Build A Nuclear Warhead In 10 Easy Steps
"IT'S NOT JUST FOR GEEKS ANYMORE"
SPECIAL 4-PAGE PORTFOLIO
WHAT OUR ADMINISTRA-TORS LOOK LIKE NAKED
"SURPRISE!!!"
NEW READERS' POLL! IS OUR PRINCIPAL A:
1. Repressed Noodlehead
OR
2. Witless Fascist Dork
PEACHFUZZ DRUG EDITOR RATES TOP FIVE HEAD SHOPS

A principal's vision of a student newspaper without review?

PEACHFUZZ
SHOCKING EXCLUSIVE REPORT
SCHOOL MASCOT, HAPPY PEACH, SHOWS SIGNS OF ROT!!
SITE OF MOLD
"MUST BE THE WORK OF COMMUNISTS" SAYS PRINCIPAL
"I Felt Like I Was On Top Of The World! Honest!"
INSTALLMENT #2 IN AN ONGOING SERIES OF INTERVIEWS WITH OUR CHEERLEADERS!
NEW READERS' POLL! DO YOU LIKE/DISLIKE OUR PRINCIPAL'S NEW HAIRSTYLE?
BEFORE
AFTER

A student's vision of a student newspaper after review by school administration?

city of 60,000. The school-sponsored student newspaper, *Peachfuzz*, is published every other week. In the past, there have been few regulations regarding the newspaper, and few people worried about it. Though there were certainly controversial issues at Peachy High–such as teenage pregnancy, drug abuse, shoplifting, and racial tension–the student journalists were usually content to write about dances, canned-food drives, and features on such things as the school mascot, The Happy Peach. In other words, there was very little controversy in the pages of *Peachfuzz*.

Then, last year, during the spring term, a junior editor wrote an opinion piece on religion. "Religion," he declared, "is like a terrible drug which poisons the mind of people. If we did not spend all this time worrying about the afterlife, we could make life a lot better here on earth." The piece was published on page 3 of *Peachfuzz* and quickly caused an uproar in the community. A number of parents demanded that the principal be fired for allowing the article to run. The principal said that the paper was never reviewed before publication, because the school board had no policy on the matter. The school board did not fire the principal, but agreed it was time for Peachy High to develop a clear policy on *Peachfuzz*.

Two policies on student expression have since been prepared for the school board's consideration. **Policy A** allows school officials to review the student newspaper prior to publication and to censor any material which they find offensive or potentially harmful to the school environment or to the community at large. **Policy B** guarantees student journalists the right to publish what they please, subject only to disciplinary action *after publication*, if the material is obscene or libelous or causes a "substantial disruption" of the educational process.

A student addresses a local school board. *CRF Archives*

Questions for Everyone to Discuss:

- What should be the goals of a school board policy?
- What are the qualities of a good school board policy?
- When considering a policy, should the opinions of certain members of the community be valued more than others?
- Are the proposed school board policies constitutional?

Procedures for Presenters

There will be eight presentations before the school board, two from each of the groups listed below, one of which will be in support of Policy A, the other for Policy B.

1. Divide into your groups. Discuss the questions listed under your group heading below. Consider: Do group members disagree on the purpose or

value of student free expression? Do you disagree on the nature of teachers' and administrators' responsibilities regarding student journalism? What is the source of your disagreement?

2. Decide which school board policy your character supports and why.

3. Your group should prepare two short presentations: one by group members who support Policy A and the other by those in support of Policy B. Presentations should include both your reasons for supporting a policy and your reasons for rejecting the arguments of other group members.

Profiles and Questions

Group 1. Peachy High Personnel
Questions to discuss:

- What are the practical benefits and disadvantages of the proposed school board policies?
- Will these policies serve the educational goals of the school? Will they contribute to a healthy school environment overall?

Principal: Tory Gutrecht
In the two years you have been at Peachy High, there has been only one crisis which has threatened your job and that was the crisis over *Peachfuzz*. While you think the journalism advisor is a good teacher, you need some assurance that you can take part in the paper's editorial decisions in the future.

Former Journalism Advisor: Chris Tudor
You have always felt that the paper is first and foremost an educational tool. The advisor and the school principal must work together to uphold the educational mission of the paper and to be sure that the paper does not get tangled up in local politics.

Journalism Advisor: Jamie Pensado
You have been at Peachy for fifteen years as an English teacher and you always thought it a shame that the newspaper failed to deal with controversial topics. Last year, you became journalism advisor. You hope that the new student editors will begin taking on such topics as teenage pregnancy and drug abuse in the coming year.

Assistant Principal: Brett Washington
Your experience at this and other schools has taught you that school principals do not always have the background or journalistic skills to serve as newspaper editors. The current journalism advisor seems perfectly competent. The Board should let the advisor worry about teaching journalistic skills and standards.

Group 2. Parents
Questions to Discuss:

- What are the most important rights and obligations students have while in school?
- How should these rights be protected? What are the responsibilities of school personnel in protecting students from each other?

Francis Muse
Your child is a senior and an extremely good writer. She wants nothing more than to be a journalist and has many interesting ideas for *Peachfuzz*. You feel that the best way for her to become a journalist is to be able to make her own choices about which stories to pursue and to get experience reporting on significant and controversial topics.

Micky Guevera
You have had a number of conflicts with school administrators and you do not trust them to wield power wisely.

Toni Savanarola
Your child is a freshman and, like yourself, is religious. While you understand that your child will inevitably be exposed to issues of sex, violence, and drug use, you believe that such exposure should come gradually and when children are more mature. You feel that adults should always be involved in discussions of such serious topics so that children like your own are not traumatized or led astray.

Robin Rothstein
You are Jewish. While growing up, you experienced anti-Semitism. Later, you heard of white high school students who used their school newspaper as a forum for stirring up hatred against blacks. In order to prevent any similar occurrences at Peachy High, you feel that the principal and school board must have some authority in the running of the student newspaper.

Group 3. Expert Witnesses
Questions for Journalists to Discuss:
- What is the purpose and value of free press rights in society at large?
- Does a school-sponsored student newspaper need or deserve the same freedoms granted to private newspapers?
- Can journalistic standards and the rights of all students be protected if school authorities are not allowed to intervene in the running of the student newspaper?

Questions for Educational specialists to Discuss:
- What is the educational function of a school-sponsored student newspaper?
- How can such a newspaper best fulfill that function?

Journalist: Lynne Stephens
You are a columnist for the *Hapville Times*. You believe that freedom of speech is one of the greatest gifts in American society and it is essential that student journalists enjoy this freedom as well.

Journalist: Shelly Burke
You are a columnist for the *Hapville Express*. You believe that freedom of speech only extends as far as ownership of the newspaper. Just as you are responsible to the publisher of the *Express*, you think *Peachfuzz* journalists should be responsible to the publisher of their paper, i.e. the principal.

Education Specialist: Jean Dewey
Your studies show that educators need to give more authority to students in order to teach them to be responsible.

Education Specialist: Dana Arendt
Your studies show that students have been given too much freedom. They need guidance from administrators.

Group 4. Peachy High Students
Questions to Discuss:
- What are the rights and obligations of students while in school?
- Which of the proposed policies will best help you protect your rights and fulfill your obligations?

Tony Paine
You wrote the anti-religion piece last Spring. You expect to be a contributor to *Peachfuzz* this year.

Kim Kautsky
You have been chosen editor-in-chief of *Peachfuzz* for the coming year. You already have detailed plans for a feature issue on racial tension at Peachy High.

Pat Wong
You have been selected to be the news editor. You are uncertain about ideas such as the racial tension feature favored by Kautsky, because you think it could do a lot of damage to the racial atmosphere of the school. Your experience suggests that the paper needs mature guidance.

Sky Schuldenfrei
A *Peachfuzz* feature late last Spring made an accusation about you that was completely untrue. The paper later retracted its statement but not before you suffered a great deal because of it. You feel like the principal's authority over the newspaper is necessary to prevent such things from happening in the future.

Procedures for School Board Members

1. Listen carefully to all presentations. Try not to make up your mind until you have heard all sides. Write down any questions you may have. Remember, in trying to decide what's best for the students of Hapville, you represent the entire community.
2. After the presentations, discuss the two policies and the issues presented with your fellow school board members.

Consider the following questions:

- Is the policy you favor practical? Will it improve the education at Peachy High? Will it satisfy most segments of the community? Have you addressed at least some of the concerns of those community members who oppose it? Is the policy consistent with the First Amendment?

For Further Consideration:

1. Did the school board have the opportunity to hear diverse points of view on the proposed policies? In your opinion, is it important for a school board to hear diverse points of view before it passes a new policy? Explain.
2. Based on this simulation, what advice would you give to students and community members about how to influence decisions on school board policy? Explain.
3. Does this simulation help to prove or disprove the statement, "it's hard to write good rules?" Explain.
4. Based on this simulation, what characteristics should be possessed by an effective school board member?
5. If you were on a local school board considering these two policies, which one would you support and why?

STUDENT EXPRESSION POLICY A

Intent: It is not the policy or practice of the Board of Education to open its facilities for indiscriminate use by students or the general public. School facilities are reserved by the Board of Education for supervised educational purposes, and the Board of Education reserves its authority over all publications that students, parents and members of the public might reasonably perceive to bear the approval of the Board. The Board's actions in regulating publications shall be reasonably related to its legitimate educational concerns.

Section 1: School Sponsored Publications and Activities

All school-funded student publications are developed within the adopted curriculum. School officials retain ultimate control in determining what constitutes reasonable expression in such activities.

Section 2: General Guidelines Regarding Student Expression

In order to ensure the orderly and efficient operation of the schools, all school-sponsored student publications shall be subject to the following General Guidelines:

A. No publication which materially or substantially interferes with appropriate student discipline on school premises or disrupts normal operation of the school shall be allowed.

B. No publication which invades the lawful rights of other persons shall be allowed.

C. No publication which involves the use of obscenities, or any lewd or prurient themes where such expression may reasonably be expected to be substantially harmful to the normal development of younger, more impressionable and less mature students in the school, shall be allowed.

D. No publication involving the use of false statements or innuendos which may subject any person to hatred, ridicule or contempt, or which may injure the reputation of any person, shall be allowed.

E. No publication involving the use of statements grossly offensive to the reasonable sensibilities of school personnel, or unfairly or unduly injurious to their professional reputation, shall be allowed.

F. No publication involving statements grossly offensive to the reasonable sensibilities of any racial, religious, ethnic or handicapped group, or any members thereof, shall be allowed.

G. No publication which advocates that any religious denomination, sect or point of view is preferable to any other religious denomination, sect or point of view shall be allowed.

Section 3: Violation of Guidelines

Any violation by any student of the General Guidelines, or any administrative rules, decisions or action adopted or taken in pursuance of this policy, will subject the student to disciplinary action, including suspension or expulsion.

STUDENT EXPRESSION POLICY B

Intent: It is the policy of the Board of Education that school-sponsored newspapers will be forums for student expression and the free and open discussion of issues. Content may reflect all areas of student interest, including topics about which there may be dissent or controversy. School officials are responsible for ensuring freedom of expression for all students.

Section 1: School Sponsored Newspapers

It is the policy of the Board of Education that student journalists shall have the right to determine the content of official student publications. Accordingly, the following guidelines relate only to establishing grounds for disciplinary actions subsequent to publication.

Section 2: General Guidelines Regarding Student Expression

In order to ensure the free and open discussion of ideas in the school community, the following guidelines shall be used.

A. Students who work on official student publications determine the content of those publications and are responsible for that content. These students should:

1. Determine the content of the student publication;
2. Strive to produce a publication based upon professional standards of accuracy, objectivity and fair play;
3. Review material to improve sentence structure, grammar, spelling and punctuation;
4. Check and verify all facts and verify the accuracy of all quotations; and
5. In the case of editorials or letters to the editor concerning controversial issues, determine the need for rebuttal comments and opinions and provide space therefore if appropriate.

B. Students cannot publish or distribute material that is "obscene to minors." "Minor" means any person under the age of 18. Materials which are deemed to be obscene to minors meet all three of following requirements:

1. The average person, applying contemporary community standards, would find that the publication, taken as a whole, appeals to a minor's prurient interest in sex; and
2. The publication depicts or describes, in a patently offensive way, sexual conduct such as ultimate sexual actions, masturbation and lewd exhibition of the genitals; and
3. The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

C. Students cannot publish libelous material. Libelous statements are provably false and unprivileged statements that do demonstrated injury to an individual's or business' reputation in the community. If the allegedly libeled party is a "public figure" or "public official" as defined below, then school officials must show that the false statement was published with actual malice, that the student journalists knew that the statement was false or that they published it without trying to verify the truthfulness of the statement.

1. A public official is a person who holds an election or appointed public office, or a person who either seeks the public's attention or is well known because of personal achievements.
2. School employees are public officials or public figures in articles concerning their school-related activities.

D. Students cannot publish or distribute material that will cause "a material and substantial disruption of school activities." Disruption is defined as student rioting, unlawful seizure of property, destruction of property; or substantial student participation in a school boycott, sit-in, walk-out or other related forms of activity. Material that stimulates heated discussion or debate **does not** constitute the type of disruption prohibited.

E. If, in the opinion of the student editor, student editorial staff or faculty advisor, material proposed for publication may be obscene, libelous or would cause an immediate, material and substantial disruption of school activities, the legal opinion of an attorney should be sought. Legal fees will be paid by the board of education. The final decision of whether the material is to be published will be left to the student editor or student editorial staff.

F. The student newspapers will not be reviewed by school administrators prior to distribution or withheld from distribution. The school assumes no liability for the content of the student newspaper, and urges all student journalists to recognize that with editorial control comes responsibility for what they have written and published, including the responsibility to follow the standards of professional journalism.

PROFILES

Leslie Smart was a junior at Hazelwood East High School and a staff member of the *Spectrum* when the feature issue on Teen Problems was produced. Ms. Smart was angry when Principal Reynolds censored the articles so she joined with two other students, Cathy Kuhlmeier and Lee-Ann Tippett, to take the case to court on the basis of principle. "This is America," says Ms. Smart. "Where in the Constitution does it say that you have to be 18 to exercise freedom of press?" Ms. Smart didn't like the Supreme Court's decision in the case. "It gives too much control to the administration," she stated, "and too much control to any one person is dangerous; one person should not have the power to decide what people will read."

According to Ms. Smart, the fate of student newspapers in the post-Hazelwood era will "depend on the community." She added that "any community that's so insecure that they feel they have to present a perfect image isn't going to let the paper deal with real student problems. We're not all cheerleaders and football stars... and even those people face the same problems as the rest of us." After graduation from high school, Leslie Smart received a degree in political science and is currently an assistant to the editor of a St. Louis publication.

Robert E. Reynolds has been the principal of Hazelwood East High School since 1981. As the petitioner in this landmark case, he became a part of national history. Reynolds is amazed to have found himself the object of national media attention. He reports that he never imagined that something so "wide and broadsweeping [as the Supreme Court decision] could result from something that was a one time chance occurrence."

Mr. Reynolds approved of the Court's decision and commended his school board for exhibiting the "courage, commitment and perseverance" to pursue the newspaper case through the federal court system. The *Hazelwood* decision, he believes, has served to enhance the quality of high school journalism more than all of the educational research and discussion of the preceding twenty years. In his view, the case is significant because it clearly established that school-sponsored journalism is part of the school curriculum and therefore, under the control of the administrators.

With regard to the future of high school journalism, Mr. Reynolds sees students grappling with "hot topics," such as AIDS and drug abuse. When writing about controversial issues, Reynolds says, "student journalists should not invade the rights of students or the community."

TEACHER'S GUIDE

This lesson packet contains two classroom simulation activities: a Supreme Court hearing and a school board policy debate. They each raise issues about student rights of free speech in public schools; thus, while they overlap with each other, they are complementary. Ideally, they would be used in sequence.

The Supreme Court simulation is based on the case of *Hazelwood School District, et al v. Cathy Kuhlmeier, et al, 108 S. Ct 562 (1988)*. The Court's landmark decision held that public school authorities may censor student speech which takes place in school sponsored forums. *Hazelwood* is the first Supreme Court case which explicitly concerns student newspapers, and the Court's decision can also affect other school sponsored activities, such as theatrical productions, literary magazines, rallies, and assemblies.

The preparatory reading and moot court simulation aim to teach students about the constitutional processes and theories underlying the issues. Regarding procedure, students will become familiar with how and why cases come before the Supreme Court and the procedures used by Justices when considering these cases. With regard to constitutional theory, students will explore complex questions about freedom of speech and its regulation.

Questions surrounding free speech are often much more complex than students imagine. Because free speech is not an absolute, the Court has not been able to draw the limits upon government's ability to regulate speech with broad or straight strokes. First Amendment law has always been marked by fine and sometimes tortuous lines.

Naturally in debating *Hazelwood v. Kuhlmeier*, the students–like the Supreme Court–will have to consider questions about the public school environment, such as whether it is *good* to give students great freedom in discussing sex, divorce, and pregnancy in school forums. However though the question of what is "good" is clearly related to the question of what is "constitutional," they are not the same. If you plan to do both simulation activities, then the bulk of discussion within the court simulation should focus upon the issue of constitutionality. A full fledged debate about the best kind of school environment should be reserved for the school board activity.

Why include a school board policy discussion in a lesson on the Constitution? Debate over a question like student rights of free speech never really ends with a Supreme Court decision. Oftentimes, it is just beginning. It is important that students understand the scope and the limits of a Court decision like *Hazelwood* as well as the numerous shades of grey which continue to exist in constitutional law no matter how clear the Court aims to be in its writing. The Court's decision against the students in *Hazelwood* actually threw the entire issue of censoring school-sponsored speech back to the states and local authorities. For instance, after *Hazelwood*, a state legislature could still pass a law forbidding censorship by a school principal (Iowa passed such a law in 1989). A state supreme court could rule that a principal's censorship of the school-sponsored press is a violation of the *state's* constitution.

In the school board policy debate,

students will confront their own values more or less unencumbered by concerns with past court precedents. The major question in this discussion will be, "what's good for the schools?" Is education advanced when students are free to talk about sex in the newspaper? What *are* the proper goals of a school-sponsored newspaper? Putting these more *a*constitutional questions at the center of a post-*Hazelwood*, community discussion is, in itself, a lesson about the Constitution.

A Note on Procedure: If you are performing the moot court simulation, we advise that you wait until after the simulation is completed to distribute any text in section four. The students are not supposed to know what the Supreme Court decided until they have done the exercise themselves.

Guide for Section I (Legal Precedents) pp. 2-5

The most important precedents for the constitutional rights of students prior to *Hazelwood* are the *West Virginia Board of Education* and *Tinker* cases. You should be sure that your students grasp the evolution of the questions considered by the Court. Basically, the 1943 *West Virginia* opinion brought students' constitutional rights of free speech within the schoolhouse gates. Yet the decision was actually quite narrow, because the case at hand dealt only with whether students might be *compelled to express themselves against their will*. Only in *Tinker* (1969) did the Court directly consider whether students have a *positive right to express themselves*.

It will be well worth your effort to read the Court's decisions in these historic cases. Excerpts or the full text of these decisions can be found in many constitutional law textbooks. To find the complete opinions from these and all other opinions mentioned in the text, consult the shaded box (next page).

Question #1 (page 5)
Some Possible Advantages:

- Some rights are so important and fundamental that students need to have them protected by the federal courts.
- The Court will protect the unpopular viewpoint which may be directed at local school officials.
- School officials should not be police, judge and jury in their own disputes. They should be held accountable to the "law of the land."

Some Possible Disadvantages:

- Democratic process means that the majority should rule. School boards are, ultimately, chosen by a local, electoral majority. Unless there has been an egregious violation of constitutional rights, the Court should defer to the school authorities.
- Some views may be not only "unpopular" but damaging to the school environment.
- School officials know and understand the environments of their schools much better than judges do. They must use their own discretion in order to run the schools effectively.

Question #2 (page 5)

A. The School seems to have acted within the guidelines of the Tinker standard, since Sally disrupted the educational process and invaded the rights of others.

Finding Court Opinions

Supreme Court cases are published in *Supreme Court Reporters, U.S. Supreme Court Reports*, and *U.S. Reports, Lawyer's Edition*. At least one of these publications can be found in law libraries, most university libraries, and many law firms.

The complete citations for the cases mentioned in this lesson are:

Gitlow v. New York 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138
Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375)
West Virginia State Board of Education v. Barnette 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628
New Jersey v. T.L.O 105 S.Ct. 733, 469 U.S. 325, 83 L.Ed.2d 720
Bethel School District v. Fraser 106 S.Ct. 3159, 478 U.S. 675, 92 L.Ed.2d 549
Hague v. C.I.O 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423
Perry Education Association 460 U.S. 37, 193 S.Ct 948, 74 L.Ed.2d 794
Hazelwood v. Kuhlmeier 484 U.S.-, 108 S.Ct. 562, 98 L.Ed.2d 592
Tinker v. Des Moines 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731

The first cite is for *U.S. Reports.* The number preceding "U.S." is the volume in which the case will be found. The succeeding number indicates the page. "S.Ct." is the abbreviation for *Supreme Court Reporter.* "L.Ed." is *Lawyer's Edition*, and "L.Ed.2d" stands for *Lawyer's Edition: Second Series.*

B. It is hard to see how Bill's button could have caused significant disruption *in the school.* Either the school rule or the prineipal's interpretation of it is unconstitutionally broad.

Of Further Interest (For Teachers):
Meyer v. Nebraska 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042
1923 decision in which the Court overturned a Nebraska statute forbidding the teaching of foreign languages to students below a certain age. While the Court mentioned the rights of students, it rested its decision on a German teacher's right to earn a living.

Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico 457 US 853, 102 S.Ct. 2799, 73 L.Ed.2d 435
1982 decision in which the Court held that a school board may not remove books from a school library simply because it objects to the viewpoints expressed in them.

Guide for Section II (Hazelwood v. Kuhlmeier) pp. 6-9

Question #1 (page 7)

Public parks, squares, and sidewalks are obvious traditional public forums. Public television and radio stations, libraries, and billboards are examples of forums which have often, at least to some degree, been designated public forums.

Question 2 (page 7)

There is not necessarily any right or wrong answer to this hypothetical case, partly because of the uncertainties raised in the *Hazelwood* decision regarding the application of public forum law to the schools. The point of this case is to test the students' understanding of three central concepts of First Amendment law.

1. Public forum law: That there are public places (or media of communication) in which the owner (i.e. the government) must justify any restrictions on free speech according to First Amendment law.

2. No prior restraint: That the government may not stop speech *before* it takes place unless it can show a compelling interest.

3. A compelling interest: That, in the case of a school, the speech would materially disrupt the educational process or invade the rights of others (the Tinker standard).

Guide for Sections III and IV (Moot Court simulation and The Decision) pp. 10-16

In this mock Supreme Court hearing, students are asked to carefully consider the facts of *Hazelwood v. Kuhlmeier*. Students will portray Supreme Court Justices, law clerks, and attorneys to gain an understanding of how the Supreme Court operates. In addition, they will write a short position paper which will be critiqued by their peers.

Objectives:
As a result of this lesson, students will:

1. Be able to explain the process used by the Supreme Court to make decisions.

2. Describe the facts, issues, arguments and decision in the *Hazelwood v. Kuhlmeier* case.

3. Articulate an opinion on the decision made by the Supreme Court in *Hazelwood v. Kuhlmeier*.

Resources:
1. Enough copies of student materials for the entire class.

2. An attorney either to help students prepare for the moot court or to react to the moot court performance. The attorney should receive a copy of the lesson in advance. A school administrator or journalism instructor could be included later to discuss the effects of the *Hazelwood* case on the rights of students and the conduct of administrators.

Procedures:
1. Assign student reading material for homework before the discussion.

2. List the objectives on the board for the class.

3. Check students' understanding of the *Hazelwood* case. When the Supreme Court heard this case, what question were the Justices considering? (Answer: Were the students' First Amendment rights of freedom of speech abridged by the principal's censorship of the school-sponsored newspaper?)

4. Take a poll to discover how students would rule on the *Hazelwood* case before the simulation and record the results on the board.

5. Indicate to the students that they are about to prepare for a moot court simulation of this case. Assign 4-6 students to act as attorneys for the Petitioners (Hazelwood School District), 4-6 students to act as attorneys for the Respondents (the Hazelwood students), and the rest of the class to serve in groups of 4-6 justices. Review the roles as outlined in the student text. Give

students the remainder of the period to prepare their presentations for the next day.

The attorney groups select a member to present their arguments in the simulation. Nine of the student justices should be selected as presiding justices for the simulation. If an attorney is visiting the class, he or she may give comments and suggestions to the whole class or circulate among the groups offering advice.

6. During the simulation, you, a visiting attorney, or one of the justices should moderate the proceedings. Make sure there is a timekeeper too. When everyone is ready, the person in charge calls the court to order and proceeds as directed in the student instructions.

   The Petitioner's team presents first. The timekeeper should interrupt if a presentation exceeds the four minute limit. After the presentations, the court recesses to confer. The justices' conference should be observed by the class, though only the presiding justices may participate.

   Observers should have the following questions as they listen. When the decision has been rendered, discuss these questions with your class. This is also an excellent opportunity to involve a visiting attorney in the lesson.

   - What were the strongest arguments presented by the Petitioners? Can you think of any information or argument which would have improved their case?
   - What were the strongest arguments presented by the Respondents? Can you think of any information or argument which would have improved their case?
   - What were the key questions asked by the justices? Are there any other questions which the justices should have asked? During their conference, what arguments did they consider? Did they ignore any important arguments?
   - Does the justices' decision support or reject the Tinker standard in this case? Do you agree with their decision?

7. Students should be encouraged to step back and consider the fairness of the entire process by which the Supreme Court reaches its decisions.

   - The claim that it is a fair procedure is supported by the fact that both sides have an equal opportunity to present their arguments. Other interested parties can also contribute (through amicus briefs). The winning opinion is formed by a majority of well-informed justices.
   - The argument that the procedure is unfair might be based on the fact that laws are interpreted by only a handful of people.

8. Share the actual Supreme Court decision and compare both the judgment and the reasoning behind it with the class. You may want to review the evolution of constitutional law as presented in the majority opinion.

According to Justice White, the *Hazelwood* case was actually about a new and different issue than that addressed in the *Tinker* case, namely, *must public schools promote speech of which they disapprove* (by funding it)? The chart below gives a summary of the Court's evolution on this topic.

9. Follow-up homework assignment: Instruct the students to write a short essay supporting or refuting this statement using the objectives written on the board for their lesson.

   The Supreme Court made a wise decision in the Hazelwood v. Kuhlmeier case.

   Give each student an identification number to use in order to remain anonymous. Tell the class they are to write a short paper to convince their peers of their position. They will exchange and critique each other's papers the next day. The next day, collect and redistribute the papers.

10. Have the students read the papers. Ask the students to check to see if the paper has all the components. (Use check sheet in student section.)

11. Redistribute the papers two more times and go through the same process, always collecting the critiques. Return papers and three critiques to the authors. You may have them rewrite their papers based on critiques and/or spend class time answering questions about critiques.

Guide for Section V (School Board Simulation) pp. 17-25

Students will take the role of school board members and various members of the community who will serve as witnesses before the school board. There will be two presentations from each of four groups, one in favor of Policy A and the other for Policy B. There are sixteen witnesses and seven board members. For a large class, you may want to increase the number of board members or have students double up on their roles as witnesses.

One View of the Court's Evolution on Student Expression:

Case	Question	Decision
West Virginia	Can a public school **compel** student expression of which the student disapproves?	No
Tinker	Must a school **tolerate** student expression of which the school disapproves?	Yes
Hazelwood	Must a school **promote** student expression of which it disapproves?	No

It is important to recognize that the dissenting justices in *Hazelwood* would completely object to this phrasing of the *Hazelwood* question. According to the dissent, a school is not actually "promoting" speech just because it funds it. Everything within the schoolhouse is, after all, ultimately school funded.

Objectives:

1. Students will understand how the Hazelwood decision allows local communities to decide on the extent of the free expression rights granted to students within school-sponsored forums.

2. Students will examine procedural and substantive issues faced by a school board in developing a coherent and practical policy for the school.

Resources:

1. Copies of the introductory materials and of the two proposed board policies.

2. A school board member, school administrator, journalist, or journalism advisor to visit your class before, during, or after the simulation.

Procedures:

1. Go over the "Background" section with students.

2. Before the simulated school board hearing, a member of your local school board, school administrator or teachers' union representative could discuss with your class the elements of effective local school board policies.

3. Choose 7 (or more) members of the class to serve as school board members. Ideally, these would be students who have not made up their mind what kind of school board policy should be implemented. They are the only role-players in the simulation who will not have their personal histories and current opinions assigned to them.

4. Assign 16 students to each of the roles listed in the lesson above. Within each group, two of the characters are intended to be supporters of each of the policies. Each participant should be able to figure out from the character description which policy his or her

The *Spectrum* newsroom the day after the Supreme Court decision in *Hazelwood v. Kuhlmeier*. ***AP/Wide World Photos***

character would logically support. These students will almost inevitably have to suppress their own opinions on free speech and school authority issues in order to perform the roles assigned to them. You might want to assign students roles which will require them to argue for opinions opposite from those which they would personally support.

5. Have the presenters split up into their four groups. As a group, they should discuss the questions listed in their sections and figure out where their differences lie. Then, the groups will further divide into subgroups which support one of the policies, in order to prepare short presentations to the school board. One student from each subgroup will make the actual presentation to the board.

6. Meanwhile, members of the board should engage in a preliminary discussion of the proposed board policies. The point of this discussion is not to argue about the merits of the proposals, but merely to go over their content and be sure that everyone understands the details and goals of the policies.

7. After the presentations, you might allow board members to pose questions to the presenters. Otherwise, while the rest of the class observes, the board should discuss the merits of the two proposals and then vote on which of the two policies to adopt.

8. After the vote, a resource person (see #2) could discuss how this process differed from school board policy debates in which he or she had been involved.

9. Someone in the class could be assigned to research the actual policy of your local school board on student expression. Otherwise you may want to pursue a more general discussion of the fairness of a school board's decision-making process and whether or not the students still feel the same way about the need for federal (i.e. court) intervention in the public schools as they did at the beginning of discussion.

10. The class could view a meeting of a local school board considering policy issues.